

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

**Criminal Appeal No.1596 of 2001
(Old No. 263/1991)**

Date of decision :-26.07.2005

A.F.R. (Approved for reporting)

Not approved for reporting

Date 26.07.2005

Initials of Judge

Note :- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL APPEAL NO.1596 of 2001
(Old no.263 of 1991)

Tika Singh S/o Sh. Sher Singh
R/o Village Letti Patwari Circle,
Rawnsal, District- Pithoragarh.

Appellant

.....
Versus

State of Uttaranchal

.....

Respondent

HON'BLE J.C.S. RAWAT, J.

1. This is a criminal appeal against the judgment and order dated 25-1-1991 passed by the Sessions Judge, Pithoragarh in S.T. No. 10/1990 by which the learned Sessions Judge convicted the appellant Tika Singh and sentenced him to under go R.I. of 5 years under Section 366 I.P.C. and under Section 323 I.P.C. to under go R.I. for One year. The appellant was also convicted and sentenced under section 376 I.P.C. to under go R.I. for 7 years. All the three sentences shall run concurrently. The accused Roop Singh, Natha Singh, Hira Singh, Shankar Singh, Kalyan Singh and Man Singh were accused by the learned Sessions Judge.

3. The brief facts and that Natha Singh made an application (Ext. Ka.4) to the S.D.M. Lohaghat in which it was alleged that in the night of 12-2-1990 the complainant Natha Singh (PW3) was sitting in his house and food was being prepared. Tika Singh appellant caught Natha Singh and hurled abuses and stated that he had harmed him so he was going to kidnap his wife.

The appellant Tika Singh started to blow Lathis on him. The appellant picked up his wife Tari Devi (PW1) and took her out of the house. The other persons who were with the appellant also threatened him of setting his house ablaze. The accused persons were also looted jewellery from the house of the complainant worth Rs. 5020/- kept in the box. The person were armed with lathis. The S.D.M. sent the complaint of Police Station Lohaghat on the basis of the complainant FIR Ext. Ka 11 was prepared and a case was registered in G.D. The FIR was forwarded to the Patti Patwari (Revenue Police) of the area. After receiving the FIR the revenue police started the investigation. The Investigating Officer Madan Mohan Guruani investigated the case. He visited the place of occurrence and prepared site plan Ext. Ka 7. After completing the Investigation charge sheet Ex. Ka. 10 was submitted.

3. The injuries of Nath Singh were examined at P.H.C. Lohaghat on 15-2-1990 at 9.40 a.m. and following injuries were found on his person.

1. An abrasion surrounded by contusion situated on right side of head 9cm, forward from upper margin of right pinna size of contusion 3 cm x 2cm. colour bluish size of abrasion 0.2x 0.1 cm scabbed.
2. A contusion surrounded on left eye size 3cmx 3cm colour bluish black.
3. left eye conjunctive red.
4. A contusion on fore-head just at root of nose size 3cm x 2cm. Colour bluish.
5. Complain of pain left forearm.

All the above injuries were simple in nature and were caused by hard and blunt object. They were 2-3 days old.

4. Smt. Sweti Devi (PW2) was medically examined at P.H.C. Lohaghat on 15-2-1990 at 9.40 a.m. Her injury report Ext. Ka 3 shows that following injuries were found on her person:

1. A contusion situated on center of head size 3cm x 2cm. Colour bluish.
2. An abrasion C.A. lay on left side of face size 2cm x 0.1 cm scabbed brownish colour.
3. A contusion on forehead 2 cm above from right eye brow. Size of contusion 3 cm x 2cm . colour reddish blue.
4. A contusion situated on right upper arm 6 cm. Below from shoulder joint size 5cmx 2.5 cm. Colour reddish blue.
5. An abrasion in front of chest 4.5 cm. below from sterna notch size 1.5 cm x 0.5 cm. Scabbed colour brown.
6. Two abrasions surrounded by contusion situated on right forearm 4cm. Below from elbow joint size of contusion 13 cm x 7 cm colour bluish red. Size of abrasion respectively 3cm and 2 cm x 0.5 cm. Scabbed brown.
7. A contusion on left fore arm 3 cm. Below from elbow joint size 8 cm x 3 cm. Bluish red.
8. An abrasion 1 cm. below from injury No. 7 size and 5 cm x 0.2 cm scabbed. Brown colour.

All her injuries were simple and were caused by hard and blunt object. They were also 2-3 days old.

5. Victim(PW1)-wife of Natha Singh was medically examined at Female Hospital, Pithoragarh on 24-2-1990 at 11 a.m . No injury was found on her person. She was found habitual to sexual intercourse. Her vagina was admitted two fingers easily. The medical examination report also mentions that she was not found pregnant at that time. Her X-ray was also taken and on the basis of the same the doctor opined that she was aged between 16-18 years.

6. Charge was framed against the appellant and others under Section 147,323/149, 366/149 and 376 I.P.C.

7. The prosecution in order to prove its case has examined PW1 the victim, PW2 Smt. Sweti Devi, PW3 Nath Singh and PW4 Man Singh are the eye- witnesses. PW5 Madan Mohan Guruani is the Investigating Officer.

8. The appellant in his statement under Section 313 Cr.P.C. denied the prosecution allegations and stated that he has been implicated falsely.

9. I have heard Sri Lokendra Dobhal learned counsel for the appellant and Sri Rajeev Mohan learned AGA for the State.

10. It is admitted case that Tika Singh appellant is the brother-in-law of Nath Singh. The wife of Tika Singh appellant, sister-in-law of the complainant

deserted Tika Singh and she started living with another person in village Kafalta. It is also admitted that the victim was subjected to sexual intercourse by the appellant. It is only disputed that according to the prosecution that the appellant alongwith other persons came at the house on 12.2.1990 after sun set and caused injuries to the complainant Nath Singh PW3 and his mother Smt. Sweti Devi PW2. The appellant and other persons forcibly took Smt. Tari Devi PW1 wife of Nath Singh who were sitting inside his house with his mother Smt. Sweti Devi PW2. The appellant and other persons forcibly took his wife Smt. Tari Devi and took her out of the house shouting that they were taking away his wife and he could do whatever he would like. They also threatened him to ablaze his house and they would kill him if he dared to chase them. The appellant has taken a plea in his statement u/s 313 Cr.P.C. that the complainant Nath Singh has falsely implicated him. He was arrested by revenue police and the victim was recovered by the revenue police outside the house of the appellant Tika Singh while she was fetching water. It was further alleged by the appellant that the talks of compromise were going on with Nath Singh. When talks of compromise failed he had been falsely implicated. The appellant admitted that Nath Singh's sister Tari Devi has been married to him He alleged that Nath Singh coaxed her to go to the house of another person in village Kafalta. As per the customs of their caste, he asked Nath Singh to make a settlement. A panchayat was convened and Nath Singh was directed to pay to the appellant a sum of Rs.12000/- by way of settlement for taking the wife of the appellant having been made the wife of another person in village Kafalta. Nath Singh did not pay the amount. He had

sexual intercourse with Smt, Tari Devi from before. It was further alleged that on the Kartik Purnima fair she herself came to his house with her own accord and she started living with him. He asked Nath Singh to make a settlement as per the customs. Nath Singh demanded money from him. The appellant wanted Nath Singh to settle the matter against Rs.12000/- that he was to receive from the complainant on account of Bhana Devi having become the wife of some one else. When Nath Singh did not agree for it and Tari Devi became pregnant during this time from him..When he was not ready to pay the amount he lodged the false report. As has been narrated above the other co-accused had already been acquitted by the learned trial court only the appellant has been convicted for the offence u/s 366/376/323 IPC.

11. My attention was drawn to the written statement filed by the appellant in which it has been stated that the wife of the complainant was living with him as his wife since ling. The prosecution adduced the evidence of PW4 Man Singh who is said to be the witness of the recovery of the victim. He has proved the recovery memo Ex.Ka6 and he has stated in his evidence that the victim was recovered from the house of the appellant Tika Singh on 20.2.1990. It is in the cross-examination of PW4 Man Singh that the victim was living with Tika Singh since 3-4 months before the recovery. In other words, PW4 Man Singh has demolished the entire theory of the prosecution that she was forcibly taken 8 days back on 12.2.1990 from the hosue of the complainant. Thus the evidence of PW4 complainant further proves that the victim was living with the appellant prior to the incident. This

witness has not been declared hostile by the prosecution. The prosecution has relied upon his testimony with regard to the recovery of the victim. If the victim was living with the appellant for the last 3-4 months then the theory of prosecution is totally unreliable and unbelievable. It is in the evidence of PW1 Tari Devi and PW3 Nath Singh that the appellant used to keep eye on her all the times. She was under his strict surveillance all the time. She was completely in his clutches. She could not afford to leave the village of the appellant without risking her life. Meaning thereby she was completely under his thumb but when PW4 Man Singh was produced before the court it completely demolished the prosecution story. PW4 Man Singh has stated in his evidence that when the revenue police came there the victim had gone to fetch water from the Naula and the appellant had gone to call for at the behest of revenue police. This fact completely demolishes the prosecution theory if it was so then she was not under the surveillance of the appellant. When PW1 the victim was produced in the evidence she stated in para no.10 of her evidence that when she was in the house of the appellant her sister came there to meet her. Her sister also brought the food and both took the food there. She did not state anything to her sister. This fact does not reason to believe as to how her sister reached there if she was under the surveillance of the appellant. Secondly, if the incident took place as stated by the prosecution then why her sister would go to the house of the appellant. Thirdly if the sister when there it was the natural conduct of the victim that she did not stated what happened with her. This fact also belies the evidence of the prosecution. The appellant has taken a plea that the victim was

pregnant by him when she was at her residence. PW1 the victim has admitted that she had a pregnancy of 8 months when the evidence of PW1 was recorded. The incident took place on 12.2.1990. It was tried to show that there was no pregnancy at the time of the incident by the prosecution but this fact also fortifies the version of the defence. The incident took place at the residence of the complainant, which is said to be 30 kilometers away from the residence of the appellant. It is also admitted in the evidence of the witnesses that 13-15 villages fall on way in between the village of the complainant and the appellant. It does not reason to believe that if the lady was taken forcibly, it is natural conduct that when the lady was taken in such a way she could have made a cry in the intervening villages. Thus the conduct of PW1 further belies the prosecution evidence. It is also in evidence of the prosecution that adjacent to the house of the complainant there were houses in which the families were residing on the date of incidents but none of the witness has been produced before the court to corroborate the incident. If such incident had taken place naturally the villagers would have come to rescue the victim. There is no evidence on record, which shows that the villagers and the neighbors came at the spot to rescue the victims. It is seen in the villages when an incident taken place in the house of any person the villagers come forward to help the victims. The absence of the villagers to rescue the victims also gives an adverse inference against the prosecution.

12. It is also in the evidence that there is a custom that when any lady marries to another person if she has a living spouse a panchayat is convened in the

village and the person who had taken the wife of other person pays a compensation and makes a settlement to the person whose wife has been taken by him. PW1 has admitted in her cross-examination that such custom exists between the parties. .PW2 Smt. Sweti Devi has also admitted that there was a dispute about taking of the money. Meaning thereby there was a custom prevailing between the parties. This shows the custom and status of the parties. This fact further fortifies the defence version.

13. It was argued by the learned counsel for the appellant that there is inordinate delay in lodging the FIR and no satisfactory explanation has come forward during the evidence. Admittedly the FIR was given on 15.2.1990 to S.D.M concerned and thereupon the FIR was lodged on 16.2.1990 at 9.30 a.m. at P.S; Lohaghat. The FIR was forwarded to the Patti-Patwari of the area. The learned counsel for the appellant contended that there is inordinate delay of 4-5 days and the FIR was not lodged with the Patwari of the village. The FIR contains that the complainant went to the Patwari where he was not available and on the next day i.e. on 14.2.1990 he came to Lohaghat on foot and he got himself medically examined at P.H.C. Lohaghat. Thereafter the FIR was lodged. The said explanation has not come forward during the evidence. Nothing has been stated in the evidence during his evidence. If the delay has not been explained during the evidence it is certainly fatal to the prosecution. FIR in criminal matters is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduce at the time of trial. The object of insisting upon the prompt lodging of FIR to the police in

respect of commission of an offence is to obtain the earliest information regarding the circumstances in which the crime was committed including the names of the actual culprits and the parts played by them the weapons, if any, used, as also the names of the eye-witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay the FIR not only gets bereft of the advantage of spontaneity, danger also creep in of the introduction of a coloured version or exaggerated story. It is, therefore, essential that the delay in lodging the FIR should be explained satisfactorily. In the present case PW2 Smt. Sweti Devi and PW3 Nath Singh categorically stated that they went to Lohaghat where they made consultation with their counsel and thereafter the report was lodged. In such circumstances it is also clear that there may be exaggeration, introduction of coloured version. It is also in evidence that Patti Patwari head quarter was only 5-6 kilometers away from the place of occurrence. It is also in evidence that the motor road is available only at a distance of 6-7 kilometers from the residence of the complainant. In such circumstances the complainant has sufficient time to lodge the report at Patti Patwari head quarter. It is also in the cross-examination that the complainant came on 11.2.1990 prior a day of the incident of Lohaghat. In these circumstances, it creates a doubt about the veracity of the FIR.

14. In view of the foregoing discussion I am of the view that the prosecution has failed to prove the charges levelled against the appellant and the appellant is entitled to be acquitted.

15. The appeal is allowed. The conviction and sentence awarded by the learned trial court against the appellant u/s 376/366/323 IPC are quashed. The appellant is acquitted of the charged levelled against him under sections 147,366/149,323/149,and 376 IPC.

16. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months.

(J.C.S. Rawat, J)

Dated: 26.7.2005

MPS